

REMARKS/ARGUMENTS

Claims 1-17 and 19 are pending in the application.

Claims 1-17 and 19 are subject to restriction and/or election.

Claim 13 is currently amended to correct an inadvertent deletion from the preliminary amendment.

Applicants note that the first line of the present office action states that Applicants elected without traverse on October 11. Applicants respectfully disagree and specifically assert that the election was made with traverse based on the Examiner's lack of evidence supporting the argument that the species lacked a special technical feature.

Restriction/Election Requirement

The Examiner is requesting restriction under 35 U.S.C. § 121 and 372. The Examiner is requiring restriction between:

Group I, claim(s) 1, 3-9, 11-17 and 19, drawn to a triazole compound of formula I.

Group II, claim(s) 1-17 and 19, drawn to a diazole compound of formula I.

Group III, claim(s) 1, 3-9, 11-17 and 19, drawn to a pyridine compound of formula I.

Applicants Elect Group II, claim(s) 1-17 and 19, drawn to a diazole compound of formula I.

The Examiner is requiring Election of species. Applicants elect the species of compound A1.45, wherein:

A is CH

A' is N

R1 is NHCH₂CH₂CH₂OH

R2 is H

R3 is H

R4 is NO₂

R5 is H

R6 is H

j is 0

Claims encompassing this election are 1-5, 7-13, 15-17 and 19.

Applicants respectfully disagree with the Examiner's application of PCT Rule 13.1 and 13.2. Applicants note the Examiner's statement on Page 4 of the present office action, which states "The species are well known herbicides," and explains therefore there is no contribution over the prior art and thus no special technical feature. However, Applicants respectfully submit that without evidence that the species are well known herbicides the Examiner's statement is conclusory and cannot form the basis of an argument that the present invention lacks a special technical feature. The Examiner notes that the "contribution over the prior art" is considered in view of novelty and inventive step, however, the Examiner has not cited prior art disclosing the presently claimed invention.

For the reasons set forth above, Applicants respectfully submit that the present response overcomes all outstanding objections and rejections. Applicants respectfully request Examination of all claims.

The Commissioner is hereby authorized to charge any additional fees under 37 CFR §1.17 which may be required, or credit any overpayment, to Account No. 50-1676 in the name of Syngenta Crop Protection, Inc.

USPTO Customer No. 26748
Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-6757

Respectfully submitted,
/JAMES CUEVA/
James Cueva
Reg. No. 58,558
Attorney for Applicants

Date: December 29, 2010